

PUBLIC HEARING – PROPOSED AMENDMENTS TO TRANS 327
INTRASTATE MOTOR CARRIER SAFETY REGULATIONS
May 26, 2006, Hill Farms State Office Bldg., Madison, WI

COMMENTS OF THE WISCONSIN MOTOR CARRIERS ASSOCIATION

The Wisconsin Motor Carriers Association (WMCA) is located at 562 Grand Canyon Drive, Madison, Wisconsin. The WMCA is a non-profit trade association representing the interests of 1,260 for hire and private truck operators and includes the Wisconsin Milk Haulers Association, the Wisconsin Movers Association, the Wisconsin Motor Coach Association and the Wisconsin Towing Association.

We think our industry has made a commendable effort to improve truck safety on Wisconsin's highways since the Department adopted portions of the Federal Motor Carrier Safety Regulations in 1987 with the creation of Trans 327. We have been a willing partner with both the Department and the Federal Motor Carrier Safety Administration in a continuous process of educating truckers about safety regulations and supporting efforts of enforcement to insure compliance. We believe the result of these efforts between our industry and the motor carrier enforcement agencies has been safer Wisconsin highways for all users.

The WMCA supports the Motor Carrier Safety Assistance Program (MCSAP) and realizes its importance in ensuring the enforcement of truck safety regulations as set out in Wisconsin Administrative Rule Chapter Trans 327. We also realize the continued Federal funding of MCSAP is contingent on the State's compliance with the provisions of *49 CFR Part 350 – Commercial Motor Carrier Safety Assistance Program* relative to the compatibility of the rules set out in Trans 327 as applied to intrastate commerce with the Federal Motor Carrier Safety Regulations (FMCSRs). However the Federal government allows certain deviations from the FMCSRs as applied to intrastate commerce and Wisconsin has for the most part incorporated these variances into Trans 327. This provides that the rules are appropriately balanced between what is necessary to insure that trucks are operated safely and what is needed to allow motor carriers to go about the business of providing the transportation needs of Wisconsin's economy. We caution the Department when considering changes to Trans 327 that the final result will maintain this important balance.

We do have some recommendations regarding the proposed rule:

- We would suggest that the Department broaden its application of the variance at 350.41(a) to exempt commercial motor vehicles (CMVs) with a GVW, GVWR, GCW or GCWR of 26,000 pounds or less from all of the provisions of the FMCSRs when operated in intrastate commerce. We believe the Department's enforcement focus and resources to insure safe operation of trucks should be applied based on the definition of CMV as set out in Wisconsin s. 340.01(8). Vehicles weighing less than 26,001 pounds used for commercial purposes are currently exempt from much of Trans 327 and there are other state statutes and rules that can adequately insure their safe operation.
- We note that the continuous rest period required after driving 12 hours and being on duty 16 hours has been increased from 8 to 10 hours. We understand that the specific variances for the hours of service at 49 CFR 350.41(e) do not include reference to the continuous rest period requirement and without such reference, it could be assumed that rest period must be increased to 10 hours to achieve compatibility with the current provisions of the FMCSRs. We would ask that the Department consult with the Federal Motor Carrier Safety Administration to confirm that

this change is absolutely required to meet the tolerance guidelines for compatibility, and if it isn't, we ask that the continuous rest period remain at 8 hours.

- The proposed rule has deleted the exemption for maximum hours of service for drivers transporting agricultural commodities at 327.09 (8) and in lieu thereof adopted 395.1(k) – Agricultural operations. We would request that the term “agricultural commodities” be defined as to be consistent with the definition of “agricultural commodities” as defined in Wisconsin statute 96.01(3).

(3) "Agricultural commodity" means any agricultural, horticultural (excepting floricultural), viticultural, vegetable, poultry, and livestock products produced in this state, including milk and milk products, bees and honey, or any class, variety or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor, but not including timber and wood products.

Although current regulatory guidance of the FMCSRs does not provide for “milk and milk products” to be defined as “agricultural commodities” the recent enactment of *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users' (SAFETEA-LU)* by Congress provides as follows:

SEC. 4130. OPERATORS OF VEHICLES TRANSPORTING AGRICULTURAL COMMODITIES AND FARM SUPPLIES.

(a) Agricultural Exemption- Section 229(a)(1) of the Federal Motor Carrier Safety Improvement Act of 1999 (as added by section 4115 of this Act), is amended to read as follows:

“(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES- Regulations prescribed by the Secretary under sections 31136 and 31502 regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.’.

(b) Review by the Secretary- Section 229(c) of such Act is amended by striking ‘paragraph (2)’ and inserting ‘paragraph (1), (2), or (4)’.

(c) Definitions- Section 229(e) of such Act is amended by adding at the end the following:
“(7) AGRICULTURAL COMMODITY- The term ‘agricultural commodity’ means any agricultural commodity, non-processed food, (emphasis added) feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).

“(8) FARM SUPPLIES FOR AGRICULTURAL PURPOSES- The term ‘farm supplies for agricultural purposes’ means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.’.

Given the expanded definition of “agricultural commodity” we believe Trans 327 either in the text of the rule or by reference of 395.1(k) should reflect that transporters of milk and milk products are subject to this exemption from maximum hours of service and further, the condition relating to the duration of harvest season be should be increased to 12 months specifically for milk and milk products.

This provision would provide for much needed regulatory relief for transporters of milk in bulk, in tank trucks, as nearly a third of their drivers' on duty time is dedicated to the sampling, loading and unloading of their product. This circumstance results in difficulty in the timely pick up and delivery of a highly perishable product.

- Of some concern is the adoption of a large portion of 49 CFR 395 into Trans 327 without the benefit of it being included into the text of the rule. Prior to this proposed rule, Part 395 was not incorporated by reference, but only certain provisions included in the text at Trans 327.05. This allowed one to review all that applied relative to hours of service of drivers in the text of the rule. We would ask that that some sort of summary as to the provisions adopted from Part 395 be noted in an addendum or appendix to the rule. We feel this would do much to assist truck operators who do not operate in interstate commerce understand and comply with the hours of service regulations.
- We would respectfully request that the Department grant a reasonable time period after the public hearing to submit additional written comments on the proposed changes to Trans 327.

We do not agree with the Department's claim that the proposed rule will have no fiscal impact on the private sector. The increase in the driver's required continuous rest period from 8 to 10 hours will likely increase transportation costs during certain periods of the year. Currently, businesses that use commercial motor vehicles are experiencing significant increases in the costs of fuel and insurance along with a shortage of drivers. We hope the Department is cognizant of these economic factors as they may impact productivity and take them into consideration as they propose changes to Trans 327.

The Wisconsin Motor Carriers Association and its Divisions will continue to work with the Department to improve truck safety in Wisconsin and hope they will give thoughtful consideration to our recommendations.

Respectfully submitted,

Thomas A. Howells
President